

AMENDED IN ASSEMBLY JULY 11, 2005

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE MAY 31, 2005

AMENDED IN SENATE MAY 4, 2005

SENATE BILL

No. 755

Introduced by Senator Poochigian

February 22, 2005

An act to amend Sections 60611 and 60640 of the Education Code, relating to pupil assessment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as amended, Poochigian. Pupil assessment.

(1) Existing law, the Standardized Testing and Reporting (STAR) Program, requires each school district, charter school, and county office of education to administer a designated achievement test to each of its pupils in grades 3 and 7 and a standards-based achievement test to each of its pupils in grades 2 to 11, inclusive, until July 1, 2007, and to each of its pupils in grades 3 to 11, inclusive, after July 1, 2007.

Existing law requires, until July 1, 2007, a pupil of limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, to take a test in his or her primary language if a test is available and if fewer than 12 months have elapsed after his or her initial enrollment in any public or nonpublic school.

This bill would instead require a pupil identified as limited English proficient pursuant to a specified test who is enrolled in any of grades 2 to 11, inclusive, and who either receives instruction in his or her primary language or has been enrolled in a school in the United States

for less than 12 months, to take a test in his or her primary language if a test is available. To the extent this bill would impose additional duties on school districts, this bill would create a state-mandated local program.

This bill would require the Superintendent of Public Instruction, with the approval of the State Board of Education, to annually release to the public at least 25% of test items from the standards-based achievement test from the test administered in the previous year.

~~This~~

~~(2) This bill would make other technical, clarifying, and conforming nonsubstantive changes to existing law, and would conform certain provisions of existing law that are effective July 1, 2007, to those that are operative until that date.~~

~~(2)~~

(3) This bill would reappropriate the sum of \$2,285,000 from the Proposition 98 Reversion Account to the State Department of Education to cover costs incurred during the 2004-05 fiscal year to maintain and score the direct writing assessment for grades 4 and 7 under the STAR Program.

~~(3)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(4)~~

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 60611 of the Education Code is
2 amended to read:
3 60611. (a) A city, county, city and county, district
4 superintendent of schools, or principal or teacher of any

1 elementary or secondary school, including a charter school, shall
2 not carry on any program of specific preparation of pupils for the
3 statewide pupil assessment program or a particular test used
4 therein.

5 (b) A city, county, city and county, district superintendent of
6 schools, principal, or a teacher of an elementary or secondary
7 school, including a charter school, may use instructional
8 materials provided by the department or its agents in the
9 academic preparation of pupils for the statewide pupil assessment
10 if those instructional materials are embedded in an instructional
11 program that is intended to improve pupil learning.

12 SEC. 2. Section 60640 of the Education Code, as amended by
13 Section 15 of Chapter 233 of the Statutes of 2004, is amended to
14 read:

15 60640. (a) There is hereby established the Standardized
16 Testing and Reporting Program, to be known as the STAR
17 Program.

18 (b) Commencing in the 2004-05 fiscal year and each fiscal
19 year thereafter, and from the funds available for that purpose,
20 each school district, charter school, and county office of
21 education shall administer to each of its pupils in grades 3 and 7
22 the achievement test designated by the state board pursuant to
23 Section 60642 and shall administer to each of its pupils in grades
24 2 to 11, inclusive, the standards-based achievement test provided
25 for in Section 60642.5. The state board shall establish a testing
26 period to provide that all schools administer these tests to pupils
27 at approximately the same time during the instructional year,
28 except as necessary to ensure test security and to meet the final
29 filing date.

30 (c) The publisher and the school district shall provide two
31 makeup days for the testing of previously absent pupils within
32 the testing period established by the state board in subdivision
33 (b).

34 (d) The governing board of the school district may administer
35 achievement tests in grades other than those required by
36 subdivision (b) as it deems appropriate.

37 (e) Pursuant to paragraph (17) of subsection (a) of Section
38 1412 of Title 20 of the United States Code, individuals with
39 exceptional needs, as defined in Section 56026, shall be included
40 in the testing requirement of subdivision (b) with appropriate

1 accommodations in administration, where necessary, and those
2 individuals with exceptional needs who are unable to participate
3 in the testing, even with accommodations, shall be given an
4 alternate assessment.

5 (f) (1) At the option of the school district, pupils with limited
6 English proficiency who are enrolled in any of grades 2 to 11,
7 inclusive, may take a second achievement test in their primary
8 language. Primary language tests administered pursuant to this
9 subdivision and subdivision (g) shall be subject to the
10 requirements of subdivision (a) of Section 60641. These primary
11 language tests shall produce individual pupil scores that are valid
12 and reliable.

13 (2) Notwithstanding any other law, the state board shall
14 designate for use, as part of this program, a single primary
15 language test in each language for which a test is available for
16 grades 2 to 11, inclusive, pursuant to the process used for
17 designation of the assessment chosen in the 1997-98 fiscal year,
18 as specified in Sections 60642 and 60643, as applicable.

19 (3) (A) The department shall use funds made available
20 pursuant to Title VI of the federal No Child Left Behind Act of
21 2001 and appropriated by the annual Budget Act for the purpose
22 of developing and adopting primary language assessments that
23 are aligned to the state academic content standards. Subject to the
24 availability of funds, primary language assessments shall be
25 developed and adopted for reading/language arts and
26 mathematics in the dominant primary language of
27 limited-English-proficient pupils. The dominant primary
28 language shall be determined by the count in the annual language
29 census of the primary language of each
30 limited-English-proficient pupil enrolled in the California public
31 schools.

32 (B) Once a dominant primary language assessment is available
33 for use for a specific grade level, it shall be administered in place
34 of the assessment designated pursuant to paragraph (1) for that
35 grade level.

36 (C) In choosing a contractor to develop a primary language
37 assessment the state board shall consider the criteria for choosing
38 a contractor or test publisher as specified by Sections 60642 and
39 60643, and as specified by Section 60642.5, as applicable.

1 (D) Subject to the availability of funds, the assessments shall
2 be developed in grade order starting with the lowest grade
3 subject to the STAR Program.

4 (E) If the state board contracts for the development of primary
5 language assessments or test items to augment an existing
6 assessment, the state shall retain ownership rights to the
7 assessment and the test items. With the approval of the state
8 board, the department may license the test for use in other states
9 subject to a compensation agreement approved by the
10 Department of Finance.

11 (F) On or before January 1, 2006, the department shall submit
12 to the Legislature a report on the development and
13 implementation of the initial primary language assessments and
14 recommendations on the development and implementation of
15 future assessments and funding requirements.

16 (g) A pupil identified as limited English proficient pursuant to
17 the administration of a test made available pursuant to Section
18 60810 who is enrolled in any of grades 2 to 11, inclusive, and
19 who either receives instruction in his or her primary language or
20 has been enrolled in a school in the United States for less than 12
21 months shall be required to take a test in his or her primary
22 language if a test is available.

23 (h) (1) The Superintendent shall apportion funds to school
24 districts to enable school districts to meet the requirements of
25 subdivisions (b), (e), (f), and (g).

26 (2) The state board shall annually establish the amount of
27 funding to be apportioned to school districts for each test
28 administered and shall annually establish the amount that each
29 publisher shall be paid for each test administered under the
30 agreements required pursuant to Section 60643. The amounts to
31 be paid to the publishers shall be determined by considering the
32 cost estimates submitted by each publisher each September and
33 the amount included in the annual Budget Act, and by making
34 allowance for the estimated costs to school districts for
35 compliance with the requirements of subdivisions (b), (e), (f),
36 and (g).

37 (3) An adjustment to the amount of funding to be apportioned
38 per test may not be valid without the approval of the Director of
39 Finance. A request for approval of an adjustment to the amount
40 of funding to be apportioned per test shall be submitted in writing

1 to the Director of Finance and the chairpersons of the fiscal
2 committees of both houses of the Legislature with accompanying
3 material justifying the proposed adjustment. The Director of
4 Finance is authorized to approve only those adjustments related
5 to activities required by statute. The Director of Finance shall
6 approve or disapprove the amount within 30 days of receipt of
7 the request and shall notify the chairpersons of the fiscal
8 committees of both houses of the Legislature of the decision.

9 (i) For the purposes of making the computations required by
10 Section 8 of Article XVI of the California Constitution, the
11 appropriation for the apportionments made pursuant to paragraph
12 (1) of subdivision (h), and the payments made to the publishers
13 under the contracts required pursuant to Section 60643 or
14 subparagraph (C) of paragraph (1) of subdivision (a) of Section
15 60605 between the department and the contractor, are “General
16 Fund revenues appropriated for school districts,” as defined in
17 subdivision (c) of Section 41202, for the applicable fiscal year,
18 and included within the “total allocations to school districts and
19 community college districts from General Fund proceeds of taxes
20 appropriated pursuant to Article XIII B,” as defined in
21 subdivision (e) of Section 41202, for that fiscal year.

22 (j) As a condition to receiving an apportionment pursuant to
23 subdivision (h), a school district shall report to the
24 Superintendent all of the following:

25 (1) The number of pupils enrolled in the school district in
26 grades 2 to 11, inclusive.

27 (2) The number of pupils to whom an achievement test was
28 administered in grades 2 to 11, inclusive, in the school district.

29 (3) The number of pupils in paragraph (1) who were exempted
30 from the test at the request of their parents or guardians.

31 (k) The Superintendent and the state board are authorized and
32 encouraged to assist postsecondary educational institutions to use
33 the assessment results of the California Standards Tests,
34 including, but not limited to, the augmented California Standards
35 Tests, for academic credit, placement, or admissions processes.

36 (l) The Superintendent shall, with the approval of the state
37 board, annually release to the public at least 25 percent of test
38 items from the standards-based achievement test provided for in
39 Section 60642.5 from the test administered in the previous year.

1 (m) This section shall become inoperative on July 1, 2007, and
2 as of January 1, 2008, is repealed, unless a later enacted statute,
3 that becomes operative on or before January 1, 2008, deletes or
4 extends the dates on which it becomes inoperative and is
5 repealed.

6 SEC. 3. Section 60640 of the Education Code, as added by
7 Section 16 of Chapter 233 of the Statutes of 2004, is amended to
8 read:

9 60640. (a) There is hereby established the Standardized
10 Testing and Reporting Program, to be known as the STAR
11 Program.

12 (b) Commencing in the 2007-08 fiscal year and each fiscal
13 year thereafter, and from the funds available for that purpose,
14 each school district, charter school, and county office of
15 education shall administer to each of its pupils in grades 3 and 7
16 the achievement test designated by the state board pursuant to
17 Section 60642 and shall administer to each of its pupils in grades
18 3 to 11, inclusive, the standards-based achievement test provided
19 for in Section 60642.5. The state board shall establish a testing
20 period to provide that all schools administer these tests to pupils
21 at approximately the same time during the instructional year,
22 except as necessary to ensure test security and to meet the final
23 filing date.

24 (c) The publisher and the school district shall provide two
25 makeup days for the testing of previously absent pupils within
26 the testing period established by the state board in subdivision
27 (b).

28 (d) The governing board of the school district may administer
29 achievement tests in grades other than those required by
30 subdivision (b) as it deems appropriate.

31 (e) Pursuant to paragraph (17) of subsection (a) of Section
32 1412 of Title 20 of the United States Code, individuals with
33 exceptional needs, as defined in Section 56026, shall be included
34 in the testing requirement of subdivision (b) with appropriate
35 accommodations in administration, where necessary, and those
36 individuals with exceptional needs who are unable to participate
37 in the testing, even with accommodations, shall be given an
38 alternate assessment.

39 (f) *(1)* At the option of the school district, a pupil with
40 limited English proficiency who is enrolled in any of grades 3 to

1 11, inclusive, may take a second achievement test in his or her
2 primary language. Primary language tests administered pursuant
3 to this subdivision and subdivision (g) shall be subject to the
4 requirements of subdivision (a) of Section 60641. These primary
5 language tests shall produce individual pupil scores that are valid
6 and reliable. ~~Notwithstanding~~

7 (2) *Notwithstanding* any other law, the state board shall
8 designate for use, as part of this program, a single primary
9 language test in each language for which a test is available for
10 grades 3 to 11, inclusive, pursuant to the process used for
11 designation of the assessment chosen in the 1997-98 fiscal year,
12 as specified by Sections 60642 and 60643, and as specified by
13 Section 60642.5, as applicable.

14 ~~(g) A pupil identified as limited English proficient pursuant to~~
15 ~~the administration of a test provided by Section 60810 who is~~
16 ~~enrolled in any of grades 3 to 11, inclusive, and has not been~~
17 ~~reclassified as proficient in English pursuant to reclassification~~
18 ~~procedures required to be developed by Section 313 shall be~~
19 ~~required to take a test in his or her primary language if a test is~~
20 ~~available and if fewer than 12 months have elapsed after his or~~
21 ~~her initial enrollment in any public school in the state.~~

22 (3) (A) *The department shall use funds made available*
23 *pursuant to Title VI of the federal No Child Left Behind Act of*
24 *2001 and appropriated by the annual Budget Act for the purpose*
25 *of developing and adopting primary language assessments that*
26 *are aligned to the state academic content standards. Subject to*
27 *the availability of funds, primary language assessments shall be*
28 *developed and adopted for reading/language arts and*
29 *mathematics in the dominant primary language of*
30 *limited-English-proficient pupils. The dominant primary*
31 *language shall be determined by the count in the annual*
32 *language census of the primary language of each*
33 *limited-English-proficient pupil enrolled in the California public*
34 *schools.*

35 (B) *Once a dominant primary language assessment is*
36 *available for use for a specific grade level, it shall be*
37 *administered in place of the assessment designated pursuant to*
38 *paragraph (1) for that grade level.*

39 (C) *In selecting a contractor to develop a primary language*
40 *assessment, the state board shall consider the criteria for*

1 *choosing a contractor or test publisher as specified by Sections*
 2 *60642 and 60643, and as specified by Section 60642.5, as*
 3 *applicable.*

4 *(D) Subject to the availability of funds, the assessments shall*
 5 *be developed in grade order starting with the lowest grade*
 6 *subject to the STAR Program.*

7 *(E) If the state board contracts for the development of primary*
 8 *language assessments or test items to augment an existing*
 9 *assessment, the state shall retain ownership rights to the*
 10 *assessment and the test items. With the approval of the state*
 11 *board, the department may license the test for use in other states*
 12 *subject to a compensation agreement approved by the*
 13 *Department of Finance.*

14 *(g) A pupil identified as limited English proficient pursuant to*
 15 *the administration of a test made available pursuant to Section*
 16 *60810 who is enrolled in any of grades 2 to 11, inclusive, and*
 17 *who either receives instruction in his or her primary language or*
 18 *has been enrolled in a school in the United States for less than 12*
 19 *months shall be required to take a test in his or her primary*
 20 *language if a test is available.*

21 *(h) (1) The Superintendent shall apportion funds to school*
 22 *districts to enable school districts to meet the requirements of*
 23 *subdivision (b), the alternative assessment required by*
 24 *subdivision (e), and subdivisions (f) and (g).*

25 *(2) The state board shall annually establish the amount of*
 26 *funding to be apportioned to school districts for each test*
 27 *administered and shall annually establish the amount that each*
 28 *publisher shall be paid for each test administered under the*
 29 *agreements required pursuant to Section 60643. The amounts to*
 30 *be paid to the publishers shall be determined by considering the*
 31 *cost estimates submitted by each publisher each September and*
 32 *the amount included in the annual Budget Act, and by making*
 33 *allowance for the estimated costs to school districts for*
 34 *compliance with the requirements of subdivision (b), the*
 35 *alternative assessment required by subdivision (e), and*
 36 *subdivisions (f) and (g).*

37 *(3) An adjustment to the amount of funding to be apportioned*
 38 *per test may not be valid without the approval of the Director of*
 39 *Finance. A request for approval of an adjustment to the amount*
 40 *of funding to be apportioned per test shall be submitted in writing*

1 to the Director of Finance and the chairpersons of the fiscal
2 committees of both houses of the Legislature with accompanying
3 material justifying the proposed adjustment. The Director of
4 Finance is authorized to approve only those adjustments related
5 to activities required by statute. The Director of Finance shall
6 approve or disapprove the amount within 30 days of receipt of
7 the request and shall notify the chairpersons of the fiscal
8 committees of both houses of the Legislature of the decision.

9 (i) For the purposes of making the computations required by
10 Section 8 of Article XVI of the California Constitution, the
11 appropriation for the apportionments made pursuant to paragraph
12 (1) of subdivision (h), and the payments made to the publishers
13 under the contracts required pursuant to Section 60643 or
14 subparagraph (C) of paragraph (1) of subdivision (a) of Section
15 60605 between the department and the contractor, are “General
16 Fund revenues appropriated for school districts,” as defined in
17 subdivision (c) of Section 41202, for the applicable fiscal year,
18 and included within the “total allocations to school districts and
19 community college districts from General Fund proceeds of taxes
20 appropriated pursuant to Article XIII B,” as defined in
21 subdivision (e) of Section 41202, for that fiscal year.

22 (j) As a condition to receiving an apportionment pursuant to
23 subdivision (h), a school district shall report to the
24 Superintendent all of the following:

25 (1) The number of pupils enrolled in the school district in
26 grades 3 to 11, inclusive.

27 (2) The number of pupils to whom an achievement test was
28 administered in grades 3 to 11, inclusive, in the school district.

29 (3) The number of pupils in paragraph (1) who were exempted
30 from the test at the request of their parents or guardians.

31 (k) The Superintendent and the state board are authorized and
32 encouraged to assist postsecondary educational institutions to use
33 the assessment results of the California Standards Tests,
34 including, but not limited to, the augmented California Standards
35 Tests, for academic credit, placement, or admissions processes.

36 (l) The Superintendent shall, with the approval of the state
37 board, annually release to the public at least 25 percent of test
38 items from the standards-based achievement test provided for in
39 Section 60642.5 from the test administered in the previous year.

40 (m) This section shall become operative July 1, 2007.

1 SEC. 4. The sum of two million two hundred eighty-five
2 thousand dollars (\$2,285,000) is hereby reappropriated from the
3 Proposition 98 Reversion Account to the State Department of
4 Education for the Standardized Testing and Reporting Program.
5 These funds shall be used to cover costs incurred during the
6 2004-05 fiscal year to maintain and score the direct writing
7 assessment for grades 4 and 7 for the program funded by
8 Schedule 3 of Item 6110-113-0001 of Section 2.00 of the Budget
9 Act of 2004 (Chapter 208, Statutes of 2004).

10 SEC. 5. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

15 SEC. 6. This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or safety
17 within the meaning of Article IV of the Constitution and shall go
18 into immediate effect. The facts constituting the necessity are:

19 In order to ensure that the pupil testing programs affected by
20 this act are properly implemented, pursuant to changes made by
21 this act, it is necessary that this act take effect immediately.